

**REQUEST FOR PROPOSALS**

**DIR2389KBOOK100319**

**HONEY CREEK RESORT STATE PARK  
HOTEL MANAGEMENT**



*Iowa Department of Natural Resources*

Issuing Officer:  
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**Published: May 21, 2010**  
**Responses Due: June 11, 2010; 4:00 p.m. central time**

**TABLE OF RFP CONTENTS**

Section 1 – Introduction	_____	1
Section 2 – Service Requirements	_____	2
Section 3 – Format and Content of Bid Requirements	_____	4
Section 4 – Evaluation of Bid Proposals	_____	10
Section 5 – Administrative Information	_____	11
Section 6 – Contract and General Conditions	_____	18
Attachments	_____	19

## SECTION 1 INTRODUCTION

### 1.1 Purpose

The purpose of this Request for Proposals (RFP) is to solicit bids from qualified service providers to perform the duties of an asset manager for the Honey Creek Resort State Park (Park) in a manner that will ensure the Park is self sustaining and is able to make the required bond payments. The Department of Natural Resources (Department) is interested in contracting with individuals or companies that have hospitality, hospitality marketing, and asset management experience. A successful asset manager must have at least five years of hospitality management experience, including at least three years of asset management experience with properties similar in size and quality to the Park. A successful asset manager must have proven experience in developing, implementing, and reviewing hospitality sales and marketing plans for properties similar in size and quality to the Park.

This RFP is designed to provide vendors with the information necessary for the preparation of competitive bid proposals. The RFP process is for the Department's benefit and is intended to provide the Department with competitive information to assist in the selection process. It is not intended to be comprehensive. Each vendor is responsible for determining all factors necessary for submission of a comprehensive bid proposal.

### 1.2 Background Information

The Park is located directly north of the existing Honey Creek State Park, on the north shore of Lake Rathbun, Appanoose County, Iowa, and is accessible directly from county road J12 near the town of Iconium, Iowa. The Park includes:

- A 105-room lodge with restaurant and lounge overlooking Rathbun Lake.
- A 15,000 square-foot indoor family aquatic center.
- A 5,000 square-foot conference/retreat center.
- An 18-hole golf course/club house/practice facilities.
- An RV campground with 20-30 full-service utility hook-ups.
- Multi-purpose and hiking trails.
- A guest boat ramp and docking facilities.
- 28 family and group cottages.
- An activity center building (Summer 2010).

## **SECTION 2 SERVICE REQUIREMENTS**

### **2.1 Introduction**

Division I, Section 7(c) of Senate File 2389 provides for the Department to hire and employ an asset manager for the Park. This RFP is to solicit proposals from qualified service providers to perform the duties of an asset manager for the Park in a manner that will ensure the Park is self sustaining and is able to make the required bond payments. The Department is interested in contracting with individuals or companies that have hospitality, hospitality marketing, and asset management experience. A successful asset manager must have at least five years of hospitality management experience, including at least three years of asset management experience with properties similar in size and quality to the Park. A successful asset manager must have proven experience in developing, implementing, and reviewing hospitality sales and marketing plans for properties similar in size and quality to the Park.

### **2.2 Scope of Work**

DNR seeks to obtain an asset manager to perform the following tasks:

1. The asset manager shall provide information as to how it will ensure success and sustainability at the Park.
  - a. The asset manager shall demonstrate how goals were established during previous management experiences and how the goals were met during the past experiences.
  - b. The asset manager shall detail what the goals and expectations will be for the Park.
  - c. The asset manager shall explain how it worked with previous management companies and what the expectations are in working with the Park's existing management company.
  - d. The asset manager shall demonstrate work experience with projects funded by bonds, specifically tax-exempt bond projects.
  - e. The asset manager shall provide information as to how it will ensure success and sustainability at the Park.
2. The asset manager shall review and comment on the Park's sales and marketing plan.
  - a. The asset manager shall demonstrate experience success with sales and marketing, planning, implementation, and evaluation for the hospitality industry.
  - b. The asset manager shall meet with the Park's marketing and sales group on at least a monthly basis.
3. The asset manager shall provide for the operation of the Park in a manner consistent with the requirements and limitations set forth in the Park's operating agreement.
4. The asset manager shall monitor and supervise the Park including site visits.

- a. The asset manager shall be on site at the Park at least once a month.
  - b. The asset manager shall attend the Natural Resource Commission meetings in person on a quarterly basis and by telephone for the remaining months. The primary project manager must be the person who attends the meeting and that person shall be the same person for the duration of the contract.
- 5. The asset manager shall negotiate and recommend an annual operating budget and budget plan.
  - 6. The asset manager shall submit monthly reports and a year-ending report.
    - a. The asset manager shall develop a reporting system that demonstrates the progress and success of the purpose of the RFP. The reporting system shall be included in the proposal.
    - b. The asset manager shall submit monthly reports to the Department, the Honey Creek Authority, the Bond Counsel, the Governor, and the Legislative Services Agency. The reports shall be submitted electronically and shall be due the last working day of the month.
    - c. The asset manager shall submit a year-ending report to the Department, the Honey Creek Authority, the Bond Counsel, the Governor, and the Legislative Services Agency. The report shall be submitted electronically and shall be due within 10 days of the final working day of the fiscal year.

### **2.3 Required Experience**

- 1. The asset manager shall have at least five years of experience in hospitality management and marketing in a setting similar in size and quality to the Park.
  - a. The asset manager shall be able to provide evidence of past experience and demonstrate the quality of the past experience in the areas of hospitality management and marketing.
  - b. The asset manager shall have demonstrated experience in the golf industry.
  - c. The asset manager shall have demonstrated experience in the food and beverage industry.
- 2. The asset manager shall have at least three years of asset management experience in a setting similar in size and quality to the Park.
  - a. The asset manager shall be able to provide evidence of past experience and demonstrate the quality of the past experience in the area of asset management.

## SECTION 3 FORMAT AND CONTENT OF BID PROPOSALS

### 3.1 Instructions

These instructions prescribe the format and content of the bid proposal. They are designed to facilitate a uniform review process. Failure to adhere to the proposal format may result in the disqualification of the bid proposal.

- 3.1.1 The bid proposal shall be printed on 8.5" x 11" paper (duplex only).
- 3.1.2 The bid proposal shall be divided into two parts: (1) the Technical Proposal and (2) the Cost Proposal. The bid proposal shall be sealed in an envelope. If multiple envelopes for each bid proposal are used, the envelopes shall be numbered in the following fashion: 1 of 4, 2 of 4, etc. The envelopes shall be labeled with the following information:

***RFP Title***

***Department's Address***

***Vendor's Name and Address***

- 3.1.3 One original and two copies of the bid proposal, each in a sealed envelope, shall be timely submitted to the Issuing Officer. In addition, an electronic copy of the bid proposal shall be submitted to the Issuing Officer.
- 3.1.4 If the vendor designates any information in its proposal as confidential pursuant to section 5.22, the vendor must also submit one copy of the bid proposal from which confidential information has been excised. The confidential material must be excised in such a way as to allow the public to determine the general nature of the material removed and to retain as much of the bid proposal as possible.
- 3.1.5 Bid proposals shall not contain promotional or display materials.
- 3.1.6 Attachments shall be referenced in the bid proposal.
- 3.1.7 If a vendor proposes more than one method of meeting these requirements, each should be labeled and submitted separately. Each will be evaluated separately.

### 3.2 Technical Proposal

The following documents and responses shall be included in the bid proposal in the order given below:

#### 3.2.1 Transmittal Letter

An individual authorized to legally bind the vendor shall sign the transmittal letter. The letter shall include the vendor's mailing address, electronic mail address, fax number, and telephone number.

Any request for confidential treatment of information shall be included in the transmittal letter in addition to the specific statutory basis supporting the request and an explanation why disclosure of the information is not in the best interest of the public. The transmittal letter shall also contain the

name, address and telephone number of the individual authorized to respond to the Department about the confidential nature of the information.

### **3.2.2 Table of contents**

The vendor shall include a table of contents of its bid proposal.

### **3.2.3 Executive Summary**

The vendor shall prepare an executive summary and overview of the services it is offering, including all of the following information:

- 3.2.3.1 Statements that demonstrate that the vendor understands and agrees with the terms and conditions of the RFP and the proposed contract.
- 3.2.3.2 A vision and mission statement for this program.
- 3.2.3.3 A brief overview of the vendor's plans for how the vendor will provide the scope of services outlined in Section 2 of this RFP.
- 3.2.3.4 A demonstration of the vendor's knowledge of they type of services contemplated by Section 2 of this RFP.
- 3.2.3.5 A brief overview of the vendor's experience as required in Section 2 of this RFP.

### **3.2.4 Service and Experience Requirements**

The vendor shall address each service requirement in Section 2 of the RFP and explain how it plans to approach each requirement. The vendor shall address each experience requirement in Section 2 of the RFP and how it meets each requirement. Proposals must be fully responsive to service and experience requirements. Merely repeating the requirements will be considered non-responsive and may disqualify the vendor. Proposals must identify any deviations from the requirements of this RFP or requirements the vendor cannot satisfy. Any deviations from the requirements of the RFP or any requirement of the RFP that the vendor cannot satisfy may disqualify the vendor.

### **3.2.5 Background Information**

The vendor shall provide the following general background information:

- 3.2.5.1 Name, address, telephone number, fax number and electronic mail address of the vendor including all dba's or assumed names or other operating names of the vendor.
- 3.2.5.2 Form of business entity, i.e., corporation, partnership, proprietorship, limited liability company.
- 3.2.5.3 State of incorporation, state of formation, or state of organization.

- 3.2.5.4 Identity and specify the location(s) and telephone numbers of the major offices and other facilities that relate to the vendor's performance under the terms of this RFP.
- 3.2.5.5 Local office address and phone number (if any).
- 3.2.5.6 Number of employees.
- 3.2.5.7 Type of business.
- 3.2.5.8 Name, address and telephone number of the vendor's representative to contact regarding all contractual and technical matters concerning this proposal.
- 3.2.5.9 Name, address and telephone number of the vendor's representative to contact regarding scheduling and other arrangements.
- 3.2.5.10 Name and qualifications of any subcontractors who will be involved with this project.
- 3.2.5.11 Identify the vendor's accounting firm, if applicable.
- 3.2.5.12 The successful vendor will be required to register to do business in Iowa. If already registered, provide the date of the vendor's registration to do business in Iowa and the name of the vendor's registered agent.

### **3.2.6 Experience**

The vendor must provide the following information regarding its experience:

- 3.2.6.1 Number of years in business.
- 3.2.6.2 Number of years experience with providing the types of services sought by the RFP.
- 3.2.6.3 Describe the level of technical experience in providing the types of services sought by the RFP.
- 3.2.6.4 List all services similar to those sought by this RFP that the vendor has provided to other businesses or governmental entities.
- 3.2.6.5 Letters of reference from three previous clients knowledgeable of the vendor's performance in providing services similar to the services described in this RFP and a contact person and telephone number for each reference.

### **3.2.7 Personnel**

The vendor must provide resumes for all key personnel, including the project manager, who will be involved in providing the services contemplated by this RFP. The following information must be included in the resumes:

- 3.2.7.1 Full name.
- 3.2.7.2 Education.
- 3.2.7.3 Years of experience and employment history particularly as it relates to the scope of services specified herein.

### **3.2.8 Financial Information**

The vendor must provide the following financial information

- 3. 2.8.1 Submit audited financial statements (annual reports) for the last three years.
- 3. 2.8.2 Provide a minimum of three financial references.

### **3.2.9 Terminations, Litigation, Debarment**

The vendor must address the following:

- 3.2.9.1 During the last five years, if the vendor had a contract for services terminated for any reason. If so, provide full details related to the termination.
- 3.2.9.2 During the last five years, describe any damages or penalties of anything of value traded or given up by the vendor under any of its existing or past contracts as it relates to services performed that are similar to the services contemplated by this RFP and the resulting Contract. If so, indicate the reason for the penalty or exchange of property or services and the estimated account of the cost of that incident to the vendor.
- 3.2.9.3 During the last five years, describe any damages or penalties or anything of value traded or given up by vendor under any of its existing or past contracts as it relates to services performed that are similar to the services contemplated by this RFP. If so, indicate the reason for the penalty or exchange of property or services and the estimated amount of the cost of that incident to the vendor.
- 3.2.9.4 During the last five years, describe any order, judgment or decree of any Federal or State authority barring, suspending or otherwise limiting the right of the vendor to engage in any business, practice or activity.
- 3.2.9.5 During the last five years, list and summarize pending or threatened litigation, administrative or regulatory proceedings, or similar matters that could affect the ability of the vendor to perform the required services. The vendor must also state whether it or any owners, officers, or primary partners have ever been convicted of a felony. Failure to disclose these matters may result in rejection of the bid proposal or in termination of any subsequent contract. This is a continuing disclosure requirement. Any such matter commencing after submission of a bid proposal, and with respect to the successful vendor after the execution of a contract, must be disclosed in a timely manner in a written statement to the Department.



- 3.2.9.6 During the last five years, if any irregularities been discovered in any of the accounts maintained by the vendor on behalf of others. If so, describe the circumstances of irregularities or variances and disposition of resolving the irregularities or variances.

### **3.2.10 Proposal Certification**

The vendor shall sign and submit with the bid proposal the document included as Attachment # 1 in which the vendor shall certify that the contents of the bid proposal are true and accurate.

### **3.2.11 Acceptance of Terms and Conditions**

The vendor shall specifically agree that the bid proposal is predicated upon the acceptance of all terms and conditions stated in the RFP. If the vendor objects to any term or condition, the vendor must specifically refer to the RFP page and section. Objections or responses that materially alter the RFP may be deemed non-responsive and disqualify the vendor.

### **3.2.12 Certification of Independence and No Conflict of Interest**

The vendor shall sign and submit with the bid proposal the document included as Attachment # 2 in which the vendor shall certify that it developed the bid proposal independently. The vendor shall also certify that no relationship exists or will exist during the contract period between the vendor and the Department that interferes with fair competition or is a conflict of interest. The Department reserves the right to reject a bid proposal or cancel the award if, in its sole discretion, any relationship exists that could interfere with fair competition or conflict with the interests of the Department.

### **3.2.13 Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions**

The vendor shall sign and submit with the bid proposal the document included as Attachment # 3 in which the vendor shall certify that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal, department or agency.

### **3.2.14 Authorization to Release Information**

The vendor shall sign and submit with the bid proposal the document included as Attachment # 4 in which the vendor authorizes the release of information to the Department.

### **3.2.15 Firm Bid Proposal Terms**

The vendor shall guarantee in writing the availability of the services offered and that all bid proposal terms, including price, will remain firm a minimum of 120 days following the deadline for submitting proposals.

## **3.3 Cost Proposal**

The vendor shall provide its cost proposal for the proposed services. The cost proposal shall include the following:

Each cost proposal shall contain a detailed breakdown of the monetary cost accorded by the vendor to each of the Tasks described in the Scope of Work contained in section 2.2. The costs for travel expenses related to the performance of the duties and requirements of the asset manager shall be submitted separately from the costs of the actual work provided.

## **SECTION 4 EVALUATION OF BID PROPOSALS**

### **4.1 Introduction**

This section describes the evaluation process that will be used to determine which bid proposal provides the greatest benefits to the Department. The evaluation process is designed to award the contract not necessarily to the vendor of least cost, but rather to the vendor with the best combination of attributes to perform the required services.

### **4.2 Evaluation Committee**

The Department intends to conduct a comprehensive, fair and impartial evaluation of bid proposals received in response to this RFP. The Department will use an Evaluation Committee to review and evaluate the proposals.

### **4.3 Separation of Cost Proposals**

All cost proposals shall remain unopened and separated from the technical proposals until the evaluation committee has completed its evaluation of the technical proposal.

### **4.4 Evaluation of Proposals**

Proposals meeting the mandatory requirements will be further evaluated and points awarded based upon the documents provided by the vendor. No prospective vendor is promised a minimum or maximum number of points. Each proposal will be scored based on an evaluation of the following factors:

- Strategy and approach to accomplish the scope of work
- Strategy and approach as to how the vendor will ensure the Park's sustainability and the ability to make the bond payments
- Presentation in proposal
- Experience and success as an asset manager
- Experience and success with hospitality management
- Experience and success with hospitality sales and marketing
- Experience and success with budget and sustainability
- Qualifications and experience of vendor
- Qualifications and experience of vendor personnel (Project Managers and Staff)

### **4.5 Recommendation of the Evaluation Committee**

The final ranking and recommendation(s) of the Evaluation Committee shall be presented to the Natural Resources Commission for consideration. This recommendation may include, but is not limited to, the name of one or more vendors recommended for selection or a recommendation that no vendor be selected.

## SECTION 5 ADMINISTRATIVE INFORMATION

### 5.1 Issuing Officer

The Issuing Officer, identified below, is the sole point of contact regarding the RFP from the date of issuance until selection of the successful vendor.

Patricia Boddy  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, IA 50319  
Pat.Boddy@dnr.iowa.gov

### 5.2 Restriction on Communication

From the issue date of this RFP until announcement of the successful vendor, vendors may contact only the Issuing Officer or the Issuing Officer's designee. The Issuing Officer will respond only to questions regarding the procurement process. Questions related to the interpretation of this RFP must be submitted electronically, with the subject line reading Honey Creek Asset Manager, to the Issuing Officer by 4:00 p.m., central time, June 3, 2010. Verbal questions related to the interpretation of this RFP will not be accepted. Vendors may be disqualified if they contact any state employee other than the issuing officer. Vendors may also be disqualified if they contact any employee of Central Group, the Park's management group.

### 5.3 Downloading the RFP from the Internet

All amendments will be posted on the Department's home page at [www.iowadnr.gov](http://www.iowadnr.gov). The vendor is advised to check the Department's home page periodically for amendments to this RFP, particularly if the vendor downloaded the RFP from the Internet as the vendor may not automatically receive amendments. If the vendor received this RFP as a result of a written request to the Department, the vendor will automatically receive amendments.

### 5.4 Procurement Timetable

The following dates are set forth for informational and planning purposes. The dates denoted with an "\*" are subject to change. Changes to the timetable shall be posted on the DNR's website.

Issue RFP	May 21, 2010
Pre-Bid Meeting	June 2, 2010
Questions Due	June 3, 2010
Responses to Questions Due	June 8, 2010
Closing Date for Receipt of Bid Proposals	June 11, 2010
Bid Presentations	June 21-23, 2010*
Announce Successful Vendor	July 8, 2010*
Completion of Contract Negotiations and Execution of Contract	July 16, 2010*
Begin Contract	July 16, 2010*

## **5.5 Available Resources**

The financial information for the Park can be on the Department's website at <http://www.iowadnr.gov/honeycreek.html>. This information includes all financial reports that have been presented to the Natural Resource Commission. The financial reports of Central Group, the Park's management group, are included on the website.

## **5.6 Pre-Bid Meeting**

At 10:00 a.m., central time, on June 2, 2010, representatives from the Department will conduct a pre-bid meeting at the Park. This meeting will include a tour of the Park. The tour will be of the Park only. Questions regarding the bid, the bid process, and the financials will not be answered. Vendors must notify the Department by May 26, 2010 of the intent to attend the meeting. If there have been no notifications received by May 26, 2010, the meeting will not take place.

## **5.7 Questions, Requests for Clarification, and Suggested Changes**

Vendors are invited to submit written questions and requests for clarifications regarding the RFP. Vendors may also submit suggestions for changes to the requirements of this RFP. The questions, requests for clarifications, or suggestions must be submitted electronically, with the subject line reading Honey Creek Asset Manager, to the Issuing Officer before 4:00 p.m., central time, June 3, 2010. Oral questions will not be permitted. If the questions, requests for clarifications, or suggestions pertain to a specific section of the RFP, the page and section number(s) must be referenced. Written responses to questions, requests for clarifications, or suggestions will be sent on or before June 8, 2010 to vendors who received RFPs. The Department's written responses will be considered part of the RFP. If the Department decides to adopt a suggestion, the Department will issue an amendment to the RFP.

The Department assumes no responsibility for verbal representations made by its officers or employees unless such representations are confirmed in writing and incorporated into the RFP.

## **5.8 Amendment to the RFP and Bid Proposal and Withdrawal of Bid Proposal**

The Department reserves the right to amend the RFP at any time. The vendor shall acknowledge receipt of an amendment in its proposal. If the amendment occurs after the closing date for receipt of bid proposals, the Department may, in its sole discretion, allow vendors to amend their bid proposals in response to the Department's amendment if necessary.

The vendor may amend its bid proposal. The amendment must be in writing, signed by the vendor and received by time set for the receipt of proposals. Electronic mail and faxed amendments will not be accepted.

Vendors who submit proposals in advance of the deadline may withdraw, modify, and resubmit proposals at any time prior to the deadline for submitting proposals. Vendors must notify the Issuing Officer in writing if they wish to withdraw their proposals.

## **5.9 Submission of Bid Proposals**

The Department must receive the bid proposal at DNR before 4:00 p.m., central time, June 11, 2010. This is a mandatory requirement and will not be waived by the Department. Any bid proposal received after this deadline will be rejected and returned unopened to the vendor. Vendors mailing bid proposals must allow ample mail delivery time to ensure timely receipt of their bid proposals. It is the vendor's responsibility to ensure that the bid proposal is received prior to the deadline. Postmarking by the due date will not substitute for actual receipt of the bid proposal. Electronic mail and faxed bid proposals will not be accepted.

Vendors must furnish all information necessary to evaluate the bid proposal. Bid proposals that fail to meet the mandatory requirements of the RFP will be disqualified. Verbal information provided by the vendor shall not be considered part of the vendor's proposal.

## **5.10 Bid Proposal Opening**

The Department will open bid proposals on June 14, 2010. The bid proposals will remain confidential until the Evaluation Committee has reviewed all the bid proposals submitted in response to this RFP, selected top candidates, viewed vendor presentations, and the Department has announced a notice of intent to award a contract. See Iowa Code Section 72.3.

## **5.11 Costs of Preparing the Bid Proposal**

The costs of preparation and delivery of the bid proposal are solely the responsibility of the vendor.

## **5.12 Rejection of Bid Proposals**

The Department reserves the right to reject any or all bid proposals, in whole and in part, received in response to this RFP at any time prior to the execution of a written contract. Issuance of this RFP in no way constitutes a commitment by the Department to award a contract. This RFP is designed to provide vendors with the information necessary to prepare a competitive bid proposal. This RFP process is for the Department's benefit and is intended to provide the Department with competitive information to assist in the selection of a vendor to provide services. It is not intended to be comprehensive and each vendor is responsible for determining all factors necessary for submission of a comprehensive bid proposal.

## **5.13 Disqualification**

The Department shall reject outright and shall not evaluate proposals for any one of the following reasons:

1. The vendor fails to deliver the bid proposal by the due date and time.
2. The vendor fails to deliver the cost proposal in a separate envelope.
3. The vendor states that a service requirement cannot be met.
4. The vendor's response materially changes a service requirement.
5. The vendor's response limits the rights of the Department.
6. The vendor fails to include information necessary to substantiate that it will be able to meet a service requirement. A response of "will comply" or merely repeating the requirement is not sufficient. Responses must indicate present capability; representations that future developments will satisfy the requirement are not sufficient.

7. The vendor fails to respond to the Department's request for information, documents, or references.
8. The vendor fails to include a bid bond.
9. The vendor fails to include any signature, certification, authorization, stipulation, disclosure or guarantee requested in section 3 of this RFP.
10. The vendor presents the information requested by this RFP in a format inconsistent with the instructions of the RFP.
11. The vendor initiates unauthorized contact regarding the RFP with state employees.
12. The vendor initiates unauthorized contact regarding the RFP with Central Group.
13. The vendor provides misleading or inaccurate responses.

#### **5.14 Nonmaterial and Material Variances**

The Department reserves the right to waive or permit cure of nonmaterial variances in the bid proposal if, in the judgment of the Department, it is in the Department's best interest to do so. Nonmaterial variances include minor informalities that do not affect responsiveness; that are merely a matter of form or format; that do not change the relative standing or otherwise prejudice other vendors; that do not change the meaning or scope of the RFP; or that do not reflect a material change in the services. In the event the Department waives or permits cure of nonmaterial variances, such waiver or cure will not modify the RFP requirements or excuse the vendor from full compliance with RFP specifications or other contract requirements if the vendor is awarded the contract. The determination of materiality is in the sole discretion of the Department.

#### **5.15 Reference Checks**

The Department reserves the right to contact any reference to assist in the evaluation of the bid proposal, to verify information contained in the bid proposal and to discuss the vendor's qualifications and the qualifications of any subcontractor identified in the bid proposal.

#### **5.16 Information From Other Sources**

The Department reserves the right to obtain and consider information from other sources concerning a vendor, such as the vendor's capability and performance under other contracts.

#### **5.17 Verification of Bid Proposal Contents**

The content of a bid proposal submitted by a vendor is subject to verification. Misleading or inaccurate responses shall result in disqualification.

#### **5.18 Criminal History and Background Investigation**

The Department reserves the right to conduct criminal history and other background investigation of the vendor, its officers, directors, shareholders, or partners and managerial and supervisory personnel retained by the vendor for the performance of the contract.

### **5.19 Bid Proposal Clarification Process**

The Department reserves the right to contact a vendor after the submission of bid proposals for the purpose of clarifying a bid proposal to ensure mutual understanding. This contact may include written questions, interviews, site visits, a review of past performance if the vendor has provided goods or services to the Department or any other political subdivision wherever located, or requests for corrective pages in the vendor's bid proposal. The Department will not consider information received if the information materially alters the content of the bid proposal or alters the type of goods and services the vendor is offering to the Department. An individual authorized to legally bind the vendor shall sign responses to any request for clarification. Responses shall be submitted to the Department within the time specified in the Department's request. Failure to comply with requests for additional information may result in rejection of the bid proposal as non-compliant.

### **5.20 Disposition of Bid Proposals**

All proposals become the property of the Department and shall not be returned to the vendor unless all bid proposals are rejected or the RFP is cancelled. In either event, vendors will be asked to send prepaid shipping instruments to the Department for return of the bid proposals submitted. In the event the Department does not receive shipping instruments, the Department will destroy the bid proposals. Otherwise, at the conclusion of the selection process, the contents of all bid proposals will be in the public domain and be open to inspection by interested parties subject to exceptions provided in Iowa Code Chapter 22 or other applicable law.

### **5.21 Public Records and Requests for Confidential Treatment**

The Department may treat all information submitted by a vendor as public information following the conclusion of the selection process unless the vendor properly requests that information be treated as confidential at the time of submitting the bid proposal. The Department's release of information is governed by Iowa Code chapter 22. Vendors are encouraged to familiarize themselves with chapter 22 before submitting a proposal. The Department will copy public records as required to comply with the public records laws.

Any request for confidential treatment of information must be included in the transmittal letter with the vendor's bid proposal. In addition, the vendor must enumerate the specific grounds in Iowa Code Chapter 22 or other applicable law which support treatment of the material as confidential and explain why disclosure is not in the best interest of the public. The request for confidential treatment of information must also include the name, address, and telephone number of the person authorized by the vendor to respond to any inquiries by the Department concerning the confidential status of the materials.

Any bid proposal submitted which contains confidential information must be conspicuously marked on the outside as containing confidential information, and each page upon which confidential information appears must be conspicuously marked as containing confidential information. Identification of the entire bid proposal as confidential may be deemed non-responsive and disqualify the vendor.

If the vendor designates any portion of the RFP as confidential, the vendor must submit one copy of the bid proposal from which the confidential information has been excised. This excised copy is in addition to the number of copies requested in section 3 of this RFP. The confidential material must be excised in such a way as to allow the public to determine the general nature of the material removed and to retain as much of the bid proposal as possible.



The Department will treat the information marked confidential as confidential information to the extent such information is determined confidential under Iowa Code Chapter 22 or other applicable law by a court of competent jurisdiction.

In the event the Department receives a request for information marked confidential, written notice shall be given to the vendor seven calendar days prior to the release of the information to allow the vendor to seek injunctive relief pursuant to Section 22.8 of the Iowa Code.

The vendor's failure to request confidential treatment of material will be deemed by the Department as a waiver of any right to confidentiality, which the vendor may have had.

## **5.22 Copyrights**

By submitting a bid proposal, the vendor agrees that the Department may copy the bid proposal for purposes of facilitating the evaluation of the bid proposal or to respond to requests for public records. The vendor consents to such copying by submitting a bid proposal and warrants that such copying will not violate the rights of any third party. The Department shall have the right to use ideas or adaptations of ideas that are presented in the bid proposals.

## **5.23 Release of Claims**

By submitting a bid proposal, the vendor agrees that it will not bring any claim or cause of action against the Department based on any misunderstanding concerning the information provided herein or concerning the Department's failure, negligent or otherwise, to provide the vendor with pertinent information as intended by this RFP.

## **5.24 Evaluation of Bid Proposals Submitted**

Bid proposals that are timely submitted and are not subject to disqualification will be reviewed in accordance with Section 4 of the RFP. The Department will not necessarily award any contract resulting from this RFP to the vendor offering the lowest cost to the Department. Instead, the Department will award the contract to the compliant vendor whose proposal receives the most points in accordance with the evaluation criteria set forth in section 4 of this RFP and subject to approval of NRC.

## **5.25 Presentations**

After the bids have been opened and reviewed by the Department, the top Vendors may be required to make a presentation of the bid proposal. The presentation may occur at the Department's offices or at the offices of the vendor. If presentations are requested they will occur June 21-22, 2010. The determination as to need for presentations, the location, order, and schedule of the presentations is at the sole discretion of the Department. The presentation may include slides, graphics and other media selected by the vendor to illustrate the vendor's bid proposal. The presentation shall not materially change the information contained in the bid proposal.

## **5.26 Award Notice and Acceptance Period**

Notice of intent to award the contract will be sent by mail to all vendors submitting a timely bid proposal. Negotiation and execution of the contract shall be completed no later than July 16, 2010. If the apparent successful vendor fails to negotiate and deliver an executed contract by July 16, 2010, the Department may cancel the award and award the contract to the next highest ranked vendor.

### **5.27 Definition of Contract**

The full execution of a written contract shall constitute the making of a contract for services and no vendor shall acquire any legal or equitable rights relative to the contract services until the contract has been fully executed by the successful vendor and the Department.

### **5.28 Choice of Law and Forum**

This RFP and the resulting contract are to be governed by the laws of the state of Iowa. Changes in applicable laws and rules may affect the award process or the resulting contract. Vendors are responsible for ascertaining pertinent legal requirements and restrictions. Any and all litigation or actions commenced in connection with this RFP shall be brought in the appropriate Iowa forum.

### **5.29 Restrictions on Gifts and Activities**

Iowa Code Chapter 68B restricts gifts which may be given or received by state employees and requires certain individuals to disclose information concerning their activities with state government. Vendors are responsible to determine the applicability of this Chapter to their activities and to comply with the requirements. In addition, pursuant to Iowa Code section 722.1, it is a felony offense to bribe or attempt to bribe a public official.

### **5.30 Minimum Guaranteed**

The Department anticipates that the selected vendor will provide services as requested by the Department. The Department will not guarantee any minimum compensation will be paid to the vendor or any minimum usage of the vendor's services.

## **SECTION 6 CONTRACT TERMS AND CONDITIONS**

### **6.1 Contract Terms and Conditions**

The contract that the Department expects to award as a result of this RFP will be based upon the bid proposal submitted by the successful vendor and this solicitation. The contract between the Department and the successful vendor shall be a combination of the specifications, terms and conditions of this RFP, general conditions the Department utilizes, the vendor's offer contained in the technical and cost proposals, written clarifications or changes made in accordance with the provisions herein, and any other terms deemed necessary by the Department.

The contract terms contained in Attachment #5 are not intended to be a complete listing of all contract terms but are provided only to enable vendors to better evaluate the costs associative with the RFP and the potential resulting contract. Vendors should plan on such terms being included in any contract awarded as a result of this RFP. All costs associated with complying with these requirements should be included in the revenue proposal or any pricing quoted by the vendor.

By submitting a proposal, each vendor acknowledges its acceptance of these specifications, terms and conditions without change except as otherwise expressly stated in its proposal. If a vendor takes exception to a provision, it must state the reason for the exception and set forth in its proposal the specific contract language it proposes to include in place of the provision. Exceptions that materially change these terms or the requirements of the RFP may be deemed non-responsive by the Department, in its sole discretion, resulting in possible disqualification of the proposal. The Department reserves the right to either award a contract without further negotiation with the successful vendor or to negotiate contract terms with the selected vendor if the best interests of the Department would be served.

### **6.2 Contract Length**

The term of the contract will be approximately one year and will commence no later than August 1, 2010 and end on June 30, 2010.

***Attachment # 1***

Date

[Name of Issuing Officer], Issuing Officer  
[name of Agency]  
[Agency Address]

Re: Request for Proposal Number [fill in number]  
PROPOSAL CERTIFICATION

Dear [Name of Issuing Officer]:

I certify that the contents of the proposal submitted on behalf of (Name of Vendor) in response to [Name of Agency] for Proposal Number XXX for XXX Services are true and accurate. I also certify that (Name of Vendor) has not made any knowingly false statements in its proposal.

Sincerely,

---

Name and Title

***Attachment #2***

Date

[Name of Issuing Officer], Issuing Officer  
[Name of Agency]  
[Agency Address]

Re: Request for Proposal Number [fill in number]  
CERTIFICATION OF INDEPENDENCE AND NO CONFLICT OF  
INTEREST

Dear [Name of Issuing Officer]:

By submitting a proposal in response to [Name of Agency] Request for Proposal Number [number] for [describe services] Services (RFP), the undersigned certifies the following:

1. The proposal has been developed independently, without consultation, communication or agreement with any employee or consultant to the Agency who has worked on the development of this RFP, or with any person serving as a member of the evaluation committee.
2. The proposal has been developed independently, without consultation, communication or agreement with any other vendor or parties for the purpose of restricting competition.
3. Unless otherwise required by law, the information found in the proposal has not been knowingly disclosed and will not be knowingly disclosed prior to the award of the contract, directly or indirectly, to any other vendor.
4. No attempt has been made or will be made by (Name of Vendor) to induce any other vendor to submit or not to submit a proposal for the purpose restricting competition.
5. No relationship exists or will exist during the contract period between (Name of Vendor) and the Agency that interferes with fair competition or as a conflict of interest.

Sincerely,

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Name and Title

### **Attachment #3**

Date

[Name of Issuing Officer], Issuing Officer  
[Name of Agency]  
[Agency Address]

Re: Request for Proposal Number [fill in number]  
CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND  
ELIGIBILITY, AND VOLUNTARY EXCLUSION

Dear [Name of Issuing Officer]:

By submitting a proposal in response to [Name of Agency] Request for Proposal Number [number] for [describe services] Services (RFP), the undersigned certifies the following:

1. I certify that, to the best of my knowledge, (Name of Vendor) and all of its principals: (a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a Federal Agency or agency; (b) have not within a three year period preceding this proposal been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction, violation of antitrust statutes or commission of embezzlement, theft, forgery, falsification or destruction of records, making false statements, or receiving stolen property; (c) are not presently indicted for or other criminally or civilly charged by a government entity (federal, state, or local) with the commission of any of the offenses enumerated in (b) of this certification; and (d) have not within a three year period preceding this proposal had one or more public transactions (federal, state, or local) terminated for cause.
2. This certification is a material representation of fact upon which the Agency has relied upon when this transaction was entered into. If it is later determined that the undersigned knowingly rendered an erroneous certification, in addition to other remedies available, the Agency may pursue available remedies including suspension, debarment, or termination of the contract.

Sincerely,

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Name and Title

**Attachment #4**

Date

[Name of Issuing Officer], Issuing Officer  
[Name of Agency]  
[Agency Address]

Re: Request for Proposal Number [fill in number]  
AUTHORIZATION TO RELEASE INFORMATION

Dear [Name of Issuing Officer]:

[name of vendor] hereby authorizes the [Name of Agency] ("Agency") to obtain information regarding its performance on other contracts, agreements or other business arrangements, its business reputation, and any other matter pertinent to evaluation and the selection of a successful vendor in response to Request for Proposal Number [number].

The vendor acknowledges that it may not agree with the information and opinions given by such person or entity in response to a reference request. The vendor acknowledges that the information and opinions given by such person or entity may hurt its chances to receive contract awards from the Agency or may otherwise hurt its reputation or operations. The vendor is willing to take that risk.

The vendor hereby releases, acquits and forever discharges the State of Iowa, the Agency, their officers, directors, employees and agents from any and all liability whatsoever, including all claims, demands and causes of action of every nature and kind affecting the undersigned that it may have or ever claim to have relating to information, data, opinions, and references obtained by the Agency in the evaluation and selection of a successful vendor in response to Request for Proposal Number [number].

The vendor authorizes representatives of the Agency to contact any and all of the persons, entities, and references which are, directly or indirectly, listed, submitted, or referenced in the undersigned's proposal submitted in response to Request for Proposal Number [number].

The vendor further authorizes any and all persons, entities to provide information, data, and opinions with regard to the undersigned's performance under any contract, agreement, or other business arrangement, the undersigned's ability to perform, the undersigned's business reputation, and any other matter pertinent to the evaluation of the undersigned. The undersigned hereby releases, acquits and forever discharges any such person or entity and their officers, directors, employees and agents from any and all liability whatsoever, including all claims, demands and causes of action of every nature and kind affecting the undersigned that it may have or ever claim to have relating to information, data, opinions, and references supplied to the Agency in the evaluation and selection of a successful vendor in response to Request for Proposal Number [number].

A photocopy or facsimile of this signed Authorization is as valid as an original.

Sincerely,

\_\_\_\_\_  
Printed Name of Vendor Organization

\_\_\_\_\_  
Name and Title of Authorized Representative

\_\_\_\_\_  
Date

## Attachment #5

### PROFESSIONAL SERVICES SPECIAL CONDITIONS

This Contract is entered into between the Iowa Department of Natural Resources (DNR) and [Contractor Name](#) (Contractor). The parties agree as follows:

#### Section 1 IDENTITY OF THE PARTIES

**1.1 Parties.** DNR is authorized to enter into this Contract. DNR's address is: Wallace State Office Building, 502 East 9<sup>th</sup> Street, Des Moines, Iowa 50319.

[Contractor](#), a [Contractor Legal Entity Type](#) is organized under the laws of the State of [State of Organization](#) and is registered with the Iowa Secretary of State. The Contractor's address is: [Contractor Address](#).

**1.2 Project Managers.** Each party has designated a Project Manager, who shall be responsible for oversight and negotiation of any contract modifications, as follows:

**DNR Project Manager:**

[Name](#)  
[Title](#)  
[Bureau or Division](#)  
[Address](#)  
Phone: [Phone](#)  
Fax: [Fax](#)  
Email: [Email](#)

**Contractor Project Manager:**

[Name](#)  
[Title](#)  
[Address](#)  
Phone: [Phone](#)  
Fax: [Fax](#)  
Email: [Email](#)

#### Section 2 STATEMENT OF PURPOSE

**2.1 Background.**

**2.2 Purpose.** The parties have entered into this Contract for the purpose of retaining the Contractor to provide:

#### Section 3 DURATION OF CONTRACT

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**3.1 Term of Contract.** The term of this Contract shall be [Contract Start Date](#) through [Contract Expiration Date](#), unless terminated earlier in accordance with the Termination section of this Contract, However, this Contract shall not begin until it has been signed by both parties.



**3.2 Approval of Contract.** If the amount of compensation to be paid by DNR according to the terms of this Contract is equal to or greater than \$25,000.00, then performance shall not commence unless by [Contract Start Date](#) this Contract has been approved by the Natural Resource Commission.

**3.3 Extension.** DNR shall have the sole option to extend this Contract for subsequent periods, adding up to no more than six years total, by executing a signed amendment prior to the expiration of this Contract.

## **Section 4 DEFINITIONS**

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“Deliverables” shall mean services to be provided by, or on behalf of, the Contractor pursuant to this Contract. Deliverables shall include everything produced by the Contractor that is related to the Tasks, such as reports, meetings, documentation, designs, copy, artwork, data, information, graphics, images, processes, techniques, materials, plans, papers, forms, studies, modifications, content, concepts, and all other tangible and intangible works, materials and property of every kind and nature that are related to the Deliverables.

“Task Milestone Date” shall mean the deadline for accomplishing a Task required by this Contract.

## **Section 5 STATEMENT OF WORK**

**5.1 Statement of Work.** Contractor shall perform the following tasks. Contractor shall complete its obligations under this Contract by the Task Milestone Dates set out in the following table:

<b>Obligation</b>	<b>Task Milestone Date</b>
<b>Task 1:</b> <a href="#">Task Name</a> <b>Description:</b> <a href="#">Description</a>	No later than <a href="#">Task Due Date</a>
<b>Task 2:</b> <a href="#">Task Name</a> <b>Description:</b> <a href="#">Description</a>	No later than <a href="#">Task Due Date</a>
<b>Task 2:</b> <a href="#">Task Name...</a> <b>Description:</b> <a href="#">Description...</a>	No later than <a href="#">Task Due Date</a>

**5.2 Non-Exclusive Rights.** This Contract is not exclusive. DNR reserves the right to select other contractors to provide services similar or identical to the Statement of Work described in this Contract during the term of this Contract.

**5.3 Stop Services.** In addition to its other remedies described herein, DNR shall have the right at any time during the Contract term to direct the services of Contractor fully or partially suspended or stopped, if the Deliverables fail to conform to applicable specifications and requirements in this Contract. DNR shall give Contractor written notice of a stop work directive. DNR shall provide to Contractor the reasons for the stop work directive.

**5.4 Industry Standards.** Services rendered pursuant to this Contract shall be performed in a professional and workmanlike manner in accordance with the terms of this Contract and the standards of performance considered generally acceptable in the relevant industry for similar tasks and projects. In the absence of a detailed specification for the performance of any portion of this Contract, the parties agree that the applicable specification shall be the generally accepted industry standard.

**5.5 Amendments to Statement of Work – Change Order Procedure.** Modifications, deletions and additions may be made to a Statement of Work at any time during the term of this Contract by mutual written consent of the parties. Any amendment to a Statement of Work shall be called a Change Order, and the following procedures shall be followed:

- 5.5.1 Written Request.** DNR shall specify in writing the desired modifications to the same degree of specificity as in the original Statement of Work.
- 5.5.2 The Contractor's Response.** The Contractor shall submit to DNR a time and cost estimate for the requested Change Order within five business days of receiving the Change Order request.
- 5.5.3 Acceptance of the Contractor Estimate.** If DNR accepts the estimate presented by the Contractor within five business days of receiving the Contractor's response, the Contractor shall perform the modified services subject to the time and cost estimates included in the Contractor response. The Contractor's performance and the modified services shall be governed by the terms and conditions of this Contract.
- 5.5.4 Adjustment to Compensation.** The parties acknowledge that a Change Order for this Contract may or may not entitle the Contractor to an equitable adjustment in the Contractor's compensation or the performance deadlines under this Contract and that such Change Order may require approval of the Natural Resource or Environmental Protection Commission.

**5.6 Incorporation of Documents.** The following documents, and any amendments thereto existing on the date this Contract is signed by DNR, are incorporated into this Contract by this reference: (1) the Contractor's Proposal of [Contractor Proposal Submittal Date](#) submitted in response to the RFP, attached as Exhibit A; and (2) the Request for Proposal issued on [RFP Issue Date](#) and written responses to bidders' questions (collectively referred to as the RFP), attached as Exhibit B.

**5.7 Preference.** In the case of any inconsistency or conflict between the provisions of this document (including all related schedules and Statements of Work), the RFP or the Contractor's Proposal, the inconsistency or conflict shall be resolved as follows: first, by giving preference to the provisions of this document (including any Statements of Work); second, by giving preference to the provisions of the Proposal; and third, by giving preference to the provisions of the RFP.

## **Section 6 MONITORING AND REVIEW**

<p><b>6.1 Task Milestone Dates.</b> Contractor shall complete its obligations under this Contract by the Task Milestone Dates set out in Section 5.1.</p>
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Failure by Contractor to complete the above-designated portions of its obligations by the Task Milestone Dates set out herein shall constitute material breach of this Contract by Contractor and shall be grounds for DNR to immediately terminate this Contract for cause.

**6.2 Review Meetings.** Commencing with beginning performance of this Contract, the Project Managers shall meet [weekly/quarterly/another interval](#) to discuss progress made by the Contractor during the performance of this Contract. The meetings shall occur, either in person or by telephone conference call, at the following times: [Meeting Day \(Example: every second Monday\)](#) at [Meeting Time \(Example: 3:00 to 4:00 pm\)](#). Meetings may be postponed only on a case-by-case basis by mutual written agreement of the parties.

**6.3 Status Reports.** Prior to each review meeting, the Contractor Project Manager shall provide a status report listing:

- Accomplishments during the previous period,
- Activities planned for the upcoming period,
- Tasks completed or Deliverables produced during the previous period,
- An updated schedule of upcoming Deliverables,
- Any problems or concerns encountered since the last meeting, and

- An explanation of any deviations from the financial and hourly expenditures contained in the Contractor's Proposal of [Contractor Proposal Submittal Date](#), attached hereto as Exhibit A.

At the next scheduled meeting after which any party has identified in writing a problem, the party responsible for resolving the problem shall provide a report setting forth activities undertaken, or to be undertaken, to resolve the problem, together with the anticipated completion dates of such activities. Any party may recommend alternative courses of action or changes that shall facilitate problem resolution.

**6.4 DNR right to review and observe.** DNR shall have the right to review and observe, at any time, completed work or work in progress. Contractor shall allow the State of Iowa or DNR, to inspect its facilities and books and records relating to invoicing and time records for the purpose of monitoring and evaluating performance of this Contract.

## **Section 7      COMPENSATION**

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**7.1 Source of Funding.** The source of funding for this Contract is [Statutory Authority](#).

**7.2 Not-to-exceed total amount of Contract.** Payment for the work performed by Contractor according to the terms of this Contract shall not exceed \$[Contract Amount](#). Payment shall be for satisfactory completion of the Statement of Work outlined in this Contract, provided that Contractor has complied with the terms of this Contract.

**7.3 Retained Amount.** DNR shall retain 10% of the compensation associated with this Contract to secure the Contractor's performance under this Contract. The retained amount shall be payable only upon DNR's issuance of a written Final Notice of Acceptance.

**7.4 Final Notice Acceptance.** If DNR concludes, in its sole discretion, that all the Tasks required by the Statement of Work have been timely completed and all Deliverables required by this Contract have been satisfactorily completed and delivered, and that the implementation of the Statement of Work is completed and successfully deployed, then DNR shall issue a written Final Notice of Acceptance.

**7.5 Budget.** The budget for this Contract shall be as follows:

<b>Task</b>	<b>Amount of compensation allotted to Task</b>
<b>Task 1:</b> <a href="#">Task Name</a>	Not to exceed \$ <a href="#">Amount</a>
<b>Task 2:</b> <a href="#">Task Name</a>	Not to exceed \$ <a href="#">Amount</a>
<b>Task 3:</b> <a href="#">Task Name</a> (Add rows for additional Tasks as needed)	Not to exceed \$ <a href="#">Amount</a>
<b>Total</b>	<b>Not to exceed \$</b> <a href="#">Total Contract Amount</a>

**7.6 Submission of Invoices.** Invoices shall be submitted to DNR according to the following schedule:

<b>Task Milestone Date</b>	<b>Amount Due</b>	<b>Invoice Due No Later Than</b>
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<b>Task 1:</b> Task Name	Not to exceed \$ Amount	Date due (generally 30 days following Task Milestone Date)
<b>Task 2:</b> Task Name	Not to exceed \$ Amount	Date due
<b>Task 3:</b> Task Name (Add rows for additional Tasks as needed)	Not to exceed \$ Amount	Date due
<b>Total</b>	<b>Not to exceed \$ Amount</b>	

Each invoice shall itemize the work performed pursuant to the Contract. Each invoice shall comply with all applicable rules concerning payment of such claims and shall contain appropriate documentation necessary to support the fees or charges included in the invoice. DNR shall have the right to dispute any invoice item submitted for payment and to withhold payment of any disputed amount if DNR reasonably believes the invoice is inaccurate or incorrect in any way. Original invoices shall be submitted to:

Iowa Department of Natural Resources  
Attention: DNR Project Manager  
Project Manager Address

**7.7 Payment of Invoices.** DNR shall pay approved invoices in arrears and in conformance with Iowa Code section 8A.514. Unless otherwise agreed to in writing by the parties, the Contractor shall not be entitled to receive any other payment or compensation from the State for any services provided by or on behalf of the Contractor under this Contract. Payment will be issued to:

Contractor Name

Attention: Contractor Project Manager Name

Contractor Address

**7.8 No advance payment.** No advance payments shall be made for any Deliverables provided by Contractor pursuant to this Contract.

**7.9 Delay of Payment Due to Contractor's Failure.** If DNR determines that the Contractor has failed to perform or deliver any Deliverable required by this Contract, then the Contractor shall not be entitled to any compensation or any further compensation if compensation has already occurred, under this Contract until such Deliverable is performed or delivered. DNR shall withhold that portion of the invoice amount which represents payment for the Deliverable that was not completed, delivered and successfully deployed.

**7.10 Erroneous Payments and Credits.** Contractor shall promptly re-pay or refund to DNR the full amount of any overpayment or erroneous payment within ten business days after either discovery by Contractor or notification by DNR of the overpayment or erroneous payment.

**7.11 Set-off Against Sums Owed by Contractor.** In the event that Contractor owes DNR or the State any sum (including any State taxes in arrears) under the terms of this Contract, any other contract, pursuant to a judgment, or pursuant to any law, DNR may set off such sum against any sum invoiced to DNR by Contractor. This may be done in DNR's sole discretion unless otherwise required by law.

**7.12 Reimbursable Expenses.** There shall be no reimbursable expenses associated with this Contract separate from the compensation referred to in this section, unless agreed to by both parties in an amendment to this Contract or in a Change Order executed by both parties. Unless otherwise specifically provided for in this Contract, Contractor shall be solely responsible for all its costs and expenses, including travel, mileage, meals, lodging, equipment, supplies, personnel, training, salaries, benefits, insurance, conferences, long distance telephone, and all other costs and expenses of the Contractor.

**7.13 Stop Services.** In addition to its other remedies described herein, DNR shall have the right at any time during the Contract term to direct the services of the Contractor fully or partially suspended or stopped, if the Deliverables fail to conform to applicable specifications and requirements under this Contract. DNR shall give Contractor the reasons for the stop work directive.

**7.14 Final Payment.** Before final payment or a termination settlement under this Contract, the Contractor shall execute and deliver to DNR a release of all claims against DNR arising under, or by virtue of, this Contract except claims which are specifically exempted by the Contractor. Unless otherwise provided in this Contract, by State law or otherwise expressly agreed to by the parties to the Contract, final payment under a settlement upon termination of this Contract shall not constitute a waiver of DNR's claims against the Contractor, or the Contractor's sureties under this Contract or applicable performance and payment bonds.

## **PROFESSIONAL SERVICES CONTRACT GENERAL CONDITIONS**

### **Section 1 COMPLIANCE WITH THE LAW**

The Contractor, and its employees and agents, shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations and orders when performing the services under this Contract, including without limitation, all laws applicable to the prevention of discrimination in employment and the use of targeted small businesses as suppliers. The Contractor, and its employees and agents shall also comply with all federal, state and local laws regarding business permits and licenses that may be required to carry out the work performed under this Contract. Contractor represents and warrants that it has complied with all federal, state, foreign and local laws applicable to the performance of its obligations under this Contract.

### **Section 2 TERMINATION**

**2.1 Termination Due to Lack of Funds or Change in Law.** DNR shall have the right to terminate this Contract without penalty by giving sixty (60) days' written notice to the Contractor as a result of any of the following:

**2.1.1** The legislature or governor fail in the sole opinion of DNR to appropriate funds sufficient to allow DNR to either meet its obligations under this Contract or to operate as required and to fulfill its obligations under this Contract; or if funds anticipated for the continued fulfillment of the Contract are, at any time, not forthcoming or are insufficient, either through the failure of DNR to appropriate funds or funding from a federal source is reduced or discontinued for any reason, or through discontinuance or material alteration of the program for which funds were provided; or

**2.1.2** If funds are de-appropriated, reduced, not allocated, or receipt of funds is delayed, or if any funds or revenues needed by DNR to make any payment hereunder are insufficient or unavailable for any other reason as determined by DNR in its sole discretion; or

**2.1.3** If DNR's authorization to conduct its business or engage in activities or operations related to the subject matter of this Contract is withdrawn or materially altered or modified; or

**2.1.4** If DNR's duties, programs or responsibilities are modified or materially altered; or

**2.1.5** If there is a decision of any court, administrative law judge or an arbitration panel or any law, rule, regulation or order is enacted, promulgated or issued that materially or adversely affects DNR's ability to fulfill any of its obligations under this Contract.

**2.2 Immediate Termination by DNR.** DNR may terminate this Contract for any of the following reasons effective immediately without advance notice and without penalty:

**2.2.1** In the event the Contractor is required to be certified or licensed as a condition precedent to providing services, the revocation or loss of such license or certification will result in immediate termination of the Contract effective as of the date on which the license or certification is no longer in effect;

**2.2.2** DNR determines that the actions, or failure to act, of the Contractor, and its agents and employees have caused, or reasonably could cause, any person's life, health or safety to be jeopardized;

**2.2.3** The Contractor fails to comply with confidentiality laws or provisions;

**2.2.4** The Contractor furnished any statement, representation or certification in connection with this Contract or the RFP which is materially false, deceptive, incorrect or incomplete.

**2.3 Termination for Cause.** The occurrence of any one or more of the following events shall constitute cause for DNR to declare the Contractor in default of its obligations under this Contract.

**2.3.1** The Contractor fails to perform, to DNR's satisfaction, any material requirement of this Contract or is in violation of a material provision of this Contract, including, but without limitation, the express warranties made by the Contractor;

**2.3.2** DNR determines that satisfactory performance of this Contract is substantially endangered or that a default is likely to occur;

**2.3.3** The Contractor fails to make substantial and timely progress toward performance of the Contract;

**2.3.4** The Contractor becomes subject to any bankruptcy or insolvency proceeding under federal or state law to the extent allowed by applicable federal or state law including bankruptcy laws; the Contractor terminates or suspends its business; or DNR reasonably believes that the Contractor has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;

**2.3.5** The Contractor has failed to comply with applicable federal, state and local laws, rules, ordinances, regulations and orders when performing within the scope of this Contract;

**2.3.6** The Contractor has engaged in conduct that has or may expose the State or DNR to liability, as determined in DNR's sole discretion;

**2.3.7** The Contractor has infringed any patent, trademark, copyright, trade dress or any other intellectual property right or proprietary right, or the Contractor has misappropriated a trade secret, or

**2.3.8** Contractor fails to comply with any of the Task Milestone dates contained in this Contract.

**2.4 Notice of Default.** If there is a default event caused by the Contractor, DNR shall provide written notice to the Contractor requesting that the breach or noncompliance be remedied within the period of time specified in DNR's written notice to the Contractor. If the breach or noncompliance is not remedied by the date of the written notice, DNR may either:

**2.4.1** Immediately terminate the Contract without additional written notice; or,

**2.4.2** Enforce the terms and conditions of the Contract and seek any legal or equitable remedies.

**2.5 Termination upon Notice.** Following 30 days' written notice, DNR may terminate this Contract in whole or in part without the payment of any penalty or incurring any further obligation to the Contractor. Following termination upon notice, the Contractor shall be entitled to compensation, upon submission of invoices and proper proof of claim, for services provided under this Contract to DNR up to and including the date of termination.

**2.6 Remedies of the Contractor in Event of Termination by DNR.** In the event of termination of this Contract for any reason by DNR, DNR shall pay only those amounts, if any, due and owing to the Contractor for services actually rendered up to and including the date of termination of the Contract and for which DNR is obligated to pay pursuant to this Contract. Payment will be made only upon submission of invoices and proper proof of the Contractor's claim. This provision in no way limits the remedies available to DNR under this Contract in the event of termination. However, DNR shall not be liable for any of the following costs:

**2.6.1** The payment of unemployment compensation to the Contractor's employees;

**2.6.2** The payment of workers' compensation claims, which occur during the Contract or extend beyond the date on which the Contract terminates;

**2.6.3** Any costs incurred by the Contractor, including, but not limited to, startup costs, overhead or other costs not directly associated with the performance of the Contract;

**2.6.4** Any taxes that may be owed by the Contractor not directly in connection with the performance of this Contract, including, but not limited to, sales taxes, excise taxes, use taxes, income taxes or property taxes.

**2.7 The Contractor's Termination Duties.** The Contractor upon receipt of notice of termination or upon request of DNR, shall:

**2.7.1** Cease work under this Contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work under the Contract, including, without limitation, results accomplished, and conclusions resulting there from, any other matters DNR may require.

**2.7.2** Immediately cease using and return to DNR any personal property or materials, whether tangible or intangible, provided by DNR to the Contractor.

**2.7.3** Comply with DNR's instructions for the timely transfer of any active files and work product produced by the Contractor under this Contract.

**2.7.4** Cooperate in good faith with DNR, its employees, agents and contractors during the transition period between the notification of termination and the substitution of any replacement contractor.

**2.7.5** Immediately return to DNR any payments made by DNR for services that were not rendered by the Contractor.

**2.8 Rights in incomplete products.** In the event the Contract is terminated, all finished or unfinished documents, data, reports, or other materials prepared by the Contractor under this Contract shall, at the option of DNR, become DNR's property and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other material.

### **Section 3 INDEPENDENT CONTRACTOR**

The status of the Contractor shall be that of an independent contractor. The Contractor, and its employees and agents performing under this Contract are not employees or agents of the State of Iowa or any agency, division or department of the state. Neither the Contractor nor its employees shall be considered employees of DNR or the State of Iowa for federal or state tax purposes. DNR will not withhold taxes on behalf of the Contractor. Contractor shall be responsible for payment of all taxes in connection with any income earned from performing this Contract.

### **Section 4 CONFLICT OF INTEREST**

**4.1** The Contractor covenants that the Contractor presently has no interest and shall not acquire any interest, direct and indirect, which would conflict in any manner or degree with the performance of services required under this Contract. The Contractor further covenants that in the performance of this Contract no person having any such interest shall be employed.

**4.2** During the term of this Contract, Contractor shall not provide services that would create a conflict of interest with the Contractor's duties set out in this Contract. In determining whether a particular activity creates an unacceptable conflict of interest, situations in which an unacceptable conflict shall be deemed to exist shall include, but not to be limited to, any of the following:

**4.2.1** The activity involves the use of the state's or DNR's time, facilities, equipment, and supplies or other evidences of employment for purposes other than the performance of Contractor's obligations under this Contract.

**4.2.2** The activity involves the receipt of, promise of, or acceptance of money or other consideration by Contractor from anyone other than the state or DNR for the performance of any acts that Contractor is required or expected to perform as a part of Contractor's performance under this Contract.

**4.2.3** The outside employment or activity is subject to the official control, inspection, review, audit, or enforcement authority of DNR.

**4.3** If the activity creating a conflict of interest is in progress when the term of this Contract begins or is described in paragraph 4.2.1 or 4.2.2 above, then Contractor shall immediately cease the activity. During the term of this Contract, Contractor shall not enter into any activity described in paragraph 4.2.3 or which constitutes any other unacceptable conflict of interest. Contractor shall immediately disclose to DNR the



existence of any conflict of interest, including conflicts of interest which are described in paragraph 4.2.3 and are in progress when the term of this Contract begins.

## **Section 5 AMENDMENTS**

This Contract may be amended only by written mutual consent of the parties.

## **Section 6 CHOICE OF LAW AND FORUM**

The laws of the State of Iowa shall govern and determine all matters arising out of or in connection with this Contract without regard to the choice of law provisions of Iowa law. In the event any proceeding of a quasi-judicial or judicial nature is commenced in connection with this Contract, the exclusive jurisdiction for the proceeding shall be brought in Polk County District Court for the State of Iowa, Des Moines, Iowa, or in the United States District Court for the Southern District of Iowa, Central Division, Des Moines, Iowa wherever jurisdiction is appropriate.

This provision shall not be construed as waiving any immunity to suit or liability including without limitation sovereign immunity in State or Federal court, which may be available to DNR or the State of Iowa.

## **Section 7 SEVERABILITY**

If any provision of this Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Contract.

## **Section 8 ENTIRE AGREEMENT**

This Contract constitutes the entire agreement between DNR and the Contractor with respect to the subject matter hereof, and the Contractor acknowledges that it is entering into the Contract solely on the basis of the terms and conditions herein contained and not in reliance upon any representation, statement, inducement or promise, whether oral or written, not contained herein.

This Contract supersedes all prior contracts and agreements between DNR and the Contractor for the services provided in connection with this Contract.

## **Section 9 ASSIGNMENT AND DELEGATION**

This Contract may not be assigned, transferred or conveyed, in whole or in part, without the prior written consent of the other party. For the purpose of construing this provision, a transfer of a controlling interest in the Contractor shall be considered an assignment.

## **Section 10 REPRESENTATIONS AND WARRANTIES**

**10.1 Construction of Warranties Expressed in this Contract with Warranties Implied by Law.** All warranties made by the Contractor in all provisions of this Contract and the Proposal by the Contractor, whether or not this Contract specifically denominates the Contractor's promise as a warranty or whether the warranty is created only by the Contractor's affirmation or promise, or is created by a description of the materials and services to be provided, or by provision of samples to DNR, shall not be construed as limiting or negating any warranty provided by law, including without limitation, warranties which arise through course of dealing or usage of trade. The warranties expressed in this Contract are intended to

modify the warranties implied by law only to the extent that they expand the warranties applicable to the goods and services provided by the Contractor. The provisions of this Section apply during the term of this Contract and any extensions or renewals thereof.

**10.2 Concepts, Materials, and Works Produced.** Contractor represents and warrants that all the concepts, materials and deliverables produced, or provided to DNR pursuant to the terms of this Contract shall be wholly original with the Contractor or that the Contractor has secured all applicable interests, rights, licenses, permits or other intellectual property rights in such concepts, materials and work product produced under this Contract. The Contractor represents and warrants that the concepts, materials and work product produced under this Contract, and DNR's use of same, and the exercise by DNR of the rights granted by this Contract, shall not infringe upon any other work, other than material provided by the Contractor to be used as a basis for such materials, or violate the rights of publicity or privacy of, or constitute a libel or slander against, any person, firm or corporation and that the concepts, materials and work product produced under this Contract will not infringe upon the copyright, trademark, trade name, literary, dramatic, statutory, common law or any other rights of any person, firm or corporation or other entity. The Contractor represents and warrants that it is the owner of or otherwise has the right to use and distribute any software, the materials owned by the Contractor and any other materials, work product produced under this Contract and methodologies used in connection with providing the services contemplated by this Contract.

**10.3 Professional Practices.** The Contractor represents and warrants that all of the services to be performed hereunder will be rendered using sound, professional practices and in a competent and professional manner by knowledgeable, trained and qualified personnel.

**10.4 Conformity with Contractual Requirements.** The Contractor represents and warrants that the work product produced under this Contract will appear and operate in conformance with the terms and conditions of this Contract.

**10.5 Authority to Enter into Contract.** The Contractor represents and warrants that it has full authority to enter into this Contract and that it has not granted and will not grant any right or interest to any person or entity that might derogate, encumber or interfere with the rights granted to DNR.

**10.6 Obligations Owed to Third Parties.** The Contractor represents and warrants that all obligations owed to third parties with respect to the activities contemplated to be undertaken by the Contractor pursuant to this Contract are or will be fully satisfied by the Contractor so that DNR will not have any obligations with respect thereto.

**10.7 Industry Standards.** The Contractor represents and expressly warrants that all aspects of the goods and services provided or used by it shall conform to the applicable industry standards in the performance of this Contract.

**10.8 Technology Updates.** The Contractor represents warrants that it shall continually use and integrate the most current and up-to-date technology commercially available.

## **Section 11 CONFIDENTIALITY**

**11.1 Access to Confidential Data.** The Contractor's employees and agents may have access to confidential data maintained by DNR to the extent necessary to carry out its responsibilities under the contract. The Contractor shall presume that all information received pursuant to this Contract is confidential unless otherwise designated by DNR. The Contractor shall provide to DNR a written description of its policies and procedures, if any exist, to safeguard confidential information. The Contractor must designate one individual

who shall remain the responsible authority in charge of all data collected, used, or disseminated by the Contractor in connection with the performance of the Contract. The Contractor shall provide adequate supervision and training to its agents and employees to ensure compliance with the terms of this contract. The private or confidential data shall remain the property of DNR at all times. Failure by the Contractor to submit its confidentiality policies or to comply in any way with the requirements of this paragraph shall not affect Contractor's obligations to comply with other requirements herein. Nothing in this paragraph shall be construed to in any way affect the Contractor's obligations to comply with Iowa and DNR statutes and rules applicable to confidentiality, as well as DNR policies and procedures regarding confidentiality, including Department of Administrative Services (DAS) and DNR IT Security policies and procedures.

**11.2 No Dissemination of Confidential Data.** No confidential data collected, maintained, or used in the course of performance of the Contract shall be disseminated except as authorized by law and with the written consent of DNR, either during the period of the Contract or thereafter. Any data supplied to or created by the Contractor shall be considered the property of DNR. The Contractor must return any and all data collected, maintained, created or used in the course of the performance of the Contract in whatever form it is maintained promptly at the request of DNR.

**11.3 Subpoena.** In the event that a subpoena or other legal process is served upon the Contractor for records containing confidential information, the Contractor shall promptly notify DNR and cooperate with DNR in any lawful effort to protect the confidential information.

**11.4 Reporting of Unauthorized Disclosure.** The Contractor shall immediately report to DNR any unauthorized disclosure of confidential information.

**11.5 Survives Termination.** The Contractor's obligation under this Contract regarding confidential materials and information shall survive termination of this Contract.

## **Section 12 PROPERTY, INTELLECTUAL PROPERTY, PATENT AND COPYRIGHT**

**12.1 Title to Property.** Title to all property furnished by DNR or the State to Contractor to facilitate the performance of this Contract shall remain the sole property of DNR and the State. All such property shall be used by Contractor only for purposes of fulfilling its obligations under this Contract and shall be returned to DNR upon the earliest of completion, termination, or cancellation of this Contract or at DNR's request. Contractor acknowledges that it shall acquire no interest or rights in and to such property. Except as expressly provided in this Contract, Contractor shall not disclose or use such property for any purpose, including pledging or encumbering it, selling or using it for monetary gain, using it to compile mailing lists, solicit business or pursue other business activities, or otherwise. Title to all property purchased by Contractor, for which Contractor has been reimbursed or paid by DNR under this Contract, shall pass to and vest in the State, except as otherwise provided in this Contract.

**12.2 Care of Property.** Contractor shall be responsible for the proper custody and care of any DNR-owned property, including data, databases, software, interfaces, hardware, telecommunications lines and equipment, intellectual property and DNR Property furnished for Contractor's use in connection with the performance of the contract. Contractor shall exercise its best efforts to prevent damage to all such property and shall, at DNR's request, restore damaged property to its condition prior to the damage at the sole expense of Contractor. Such restoration shall be complete when judged satisfactory by DNR. In the event such property cannot be restored to DNR's satisfaction, Contractor shall reimburse DNR for any loss or damage to such property caused by Contractor, or any agent, contractor or subcontractor employed or utilized by Contractor. Contractor shall not take any action that would impair the value of, or goodwill associated with, the name, property and intellectual property rights of DNR and the State. Contractor shall obtain the prior advance

written approval from DNR prior to Contractor's use of the name, marks or intellectual property rights of DNR or the State.

**12.3 Hardware and Equipment.** In the event that any hardware and other equipment owned by Contractor and used in connection with this Contract is subject to the security interest or a legal or equitable interest by a third party who is not a party to this Contract, Contractor shall insure in any such transactions that DNR shall be notified of a default occurring under the instrument and if Contractor does not cure the default within the time allowed, DNR may, in its sole discretion, cure the default by Contractor and assess or set off all costs associated with affecting cure, including the amount in default and reasonable attorneys fees against Contractor.

**12.4 Ownership of Deliverables and Intellectual Property.** Contractor agrees that the Deliverables and all intellectual property rights and proprietary rights arising out of, embodied in, or related to, such Deliverables, shall become and remain the sole and exclusive property of the DNR and the State. Contractor hereby irrevocably transfers, assigns and conveys to the DNR and the State all right, title and interest in and to such Deliverables and intellectual property rights and proprietary rights. Contractor shall take all actions as may be necessary or requested by the DNR to carry out and affect such transfer, assignment and conveyance. Contractor represents and warrants that the DNR and the State shall acquire good and clear title to such Deliverables, free from any claims, liens, security interests, encumbrances or other rights or interests of Contractor or of any Third Party. The DNR and the State shall have the right to obtain and hold copyrights, patents or such other registrations or intellectual property protections as may be desirable or appropriate to the subject matter, and any extensions or renewals thereof. Contractor shall assist the DNR and the State to obtain and secure copyrights, patents or other intellectual property rights, registrations or protections with respect to all such Deliverables in the United States and any other countries. Contractor agrees to execute all papers and to give all facts known to it necessary to secure United States or foreign country copyrights and patents, and to transfer or cause to transfer to the DNR and the State all the right, title and interest in and to such Deliverables. Contractor also agrees to waive and not assert any moral rights it may have with regard to such Deliverables. The Contractor shall not retain any property interests or other rights in and to such Deliverables and shall not use such Deliverables, in whole or in part, for any purpose, without the prior written consent of the DNR and the payment of such royalties or other compensation as the DNR deems appropriate. As the owner of such Deliverables, the DNR and the State may, without limitation: (i) prepare derivative works based on the Deliverables, and publish, display and distribute throughout the world any Deliverable(s) in any medium, whether now known or later devised, including, without limitation, any digital or optical medium, and (ii) make, use, sell, license, sublicense, or lease the Deliverables and any intellectual property rights therein or related thereto without payment of additional compensation to Contractor.

**12.5 Further Assurances.** At the DNR's request, Contractor shall execute and deliver such instruments and take such other action as may be requested by the DNR to establish, perfect or protect the State's and the DNR's rights in and to the Deliverables and to carry out the assignments, transfers and conveyances required by this Contract. Contractor shall execute any instruments, provide all facts known to it, and do all other things requested by the DNR (both during and after the term of this Contract) in order to vest more fully in the State and the DNR any and all ownership rights and intellectual property rights in and to the Deliverables. In the event the DNR is unable, after reasonable effort, to secure Contractor's signature on any letters, patent, copyright, or other analogous protection relating to the Deliverables, for any reason whatsoever, Contractor hereby irrevocably designates and appoints the DNR, and its duly authorized officers, employees and agents, as Contractor's agent and attorney-in-fact, to act for and in its behalf to execute and file any such application or applications and to do all other lawfully permitted acts to further the prosecution and issuance of letters patent, copyright registrations, and other analogous protection, including extensions and renewals thereon, with the same legal force and effect as if executed by Contractor.

**12.6 Disputes.** In any dispute over ownership or licensing rights, Contractor shall have the burden of proving prior or independently developed rights by clear and convincing proof.

### **Section 13 JOINT AND SEVERAL LIABILITY**

If the Contractor is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, then all such entities shall be jointly and severally liable for carrying out the activities and obligations of this contract, and for any default activities and obligations.

### **Section 14 WAIVER**

Except as specifically provided for in a waiver signed by duly authorized representatives of DNR and the Contractor, failure by either party at any time to require performance by the other party or to claim a breach of any provision of the Contract shall not be construed as affecting any subsequent right to require performance or to claim a breach.

### **Section 15 NOTICE**

**15.1** Any and all notices, designations, consents, offers, acceptances or any other communication provided for herein shall be given in writing by registered or certified mail, return receipt requested, by receipted hand delivery, by Federal Express, courier or other similar and reliable carrier which shall be addressed to each party as set forth as follows in Section 1 of this Contract.

**15.2** Each such notice shall be deemed to have been provided:

**15.2.1** At the time it is actually received; or,

**15.2.2** Within one day in the case of overnight hand delivery, courier or services such as Federal Express with guaranteed next day delivery; or,

**15.2.3** Within five (5) days after it is deposited in the U.S. Mail in the case of registered U.S. Mail.

**15.3** From time to time, the parties may change the name and address of a party designated to receive notice. Such change of the designated person shall be in writing to the other party and as provided herein.

### **Section 16 CUMULATIVE RIGHTS**

The various rights, powers, options, elections and remedies of any party provided in this Contract, shall be construed as cumulative and not one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed either party by law, and shall in no way affect or impair the right of any party to pursue any other equitable or legal remedy to which any party may be entitled as long as any default remains in any way unremedied, unsatisfied or undischarged.

### **Section 17 TIME IS OF THE ESSENCE**

Time is of the essence with respect to the performance of the terms of this Contract.

## **Section 18 RECORD RETENTION AND ACCESS**

The Contractor shall maintain books, records and documents which sufficiently and properly document and calculate all charges billed to DNR throughout the term of this Contract for a period of at least five (5) years following the date of final payment or completion of any required audit, whichever is later. Records to be maintained include both financial records and service records. The Contractor shall permit the Auditor of the State of Iowa or any authorized representative of the State and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Contractor relating to orders, invoices or payments or any other documentation or materials pertaining to this Contract, wherever such records may be located. The Contractor shall not impose a charge for audit or examination of the Contractor's books and records.

## **Section 19 SOLICITATION**

The Contractor warrants that no person or selling agency has been employed or retained to solicit and secure this Contract upon an agreement or understanding for commission, percentage, brokerage or contingency excepting bona fide employees or selling agents maintained for the purpose of securing business.

## **Section 20 OBLIGATIONS BEYOND CONTRACT TERM**

This Contract shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to this Contract. All obligations of DNR and the Contractor incurred or existing under this Contract as of the date of expiration, termination or cancellation will survive the termination, expiration or conclusion of this Contract.

## **Section 21 DELAY OR IMPOSSIBILITY OF PERFORMANCE**

The Contractor shall not be in default under this Contract if performance is delayed or if Contractor may not reasonably perform the Contract due to an act of God, flood, fire or similar events. In each such case, the delay or impracticability must be beyond the reasonable control and anticipation of the Contractor, and without the fault or negligence of the Contractor. If delay results from a subcontractor's conduct, from the Contractor's negligence or fault, or from circumstances which by the exercise of reasonable diligence the Contractor should have been able to anticipate or prevent, then the Contractor shall be in default and this paragraph shall not be applicable. It shall be the responsibility of the Contractor to prove that performance was delayed or impracticable within the meaning of this paragraph.

## **Section 22 SUPERCEDES FORMER CONTRACTS OR AGREEMENTS**

Unless this Contract is an amendment to a Contract entered into between DNR and Contractor and is designated as such, then this Contract supersedes all prior contracts or agreements between DNR and the Contractor for the services provided in connection with this Contract.

## **Section 23 USE OF THIRD PARTIES AND SUBCONTRACTORS**

Contractor may not contract with third parties for the performance of any of Contractor's obligations under this Contract, unless and then only to the extent that the Special Conditions of this Contract specify otherwise. If the Special Conditions provide for a subcontractor or subcontractors, then the following conditions shall apply:

**23.1** All subcontracts shall be subject to prior approval by the DNR. The DNR's consent shall not be deemed in any way to provide for the incurrence of any obligation of DNR in addition to remuneration agreed upon in this Contract. Any subcontract to which DNR has consented shall be in writing and shall in no way alter the terms and conditions of this Contract.

**23.2** The Contractor may enter into subcontracts to complete the work required by this Contract provided that the Contractor remains responsible for all services performed under this Contract. No subcontract or delegation of work shall relieve or discharge the Contractor from any obligation, provision, or liability under this Contract. The Contractor shall remain responsible for such performance and shall be fully responsible and liable for all acts or omissions of any subcontractor.

**23.3** All restrictions, obligations and responsibilities of the Contractor under this Contract also shall apply to the subcontractors.

**23.4** DNR shall have the right to request the removal of a subcontractor from the Contract for good cause. The Contractor shall indemnify, defend and hold harmless DNR and the State from and against any and all claims, demands, liabilities, suits, actions, damages, losses, costs and expenses of every kind and nature whatsoever arising as a result of Contractor's breach of any subcontract in which it enters, including Contractor's failure to pay any and all amounts due by Contractor to any subcontractor.

**23.5** Each subcontract shall contain provisions for DNR access to the subcontractor's books, documents, and records and for inspections of work, as required of Contractor herein.

**23.6** Any action of a subcontractor, which, if done by Contractor, would constitute a breach of this Contract, shall be deemed a breach by Contractor and have the same legal effect.

**23.7** If delay results from a subcontractor's conduct, from the Contractor's negligence or fault, or from circumstances which by the exercise of reasonable diligence the Contractor should have been able to anticipate or prevent, then the Contractor shall be in default and Section 21, "Delay of Impossibility of Performance," shall not be applicable.

**23.8** If the Contract is subject to the provisions of Iowa Code chapter 8F, then the Contractor shall comply with Iowa Code chapter 8F with respect to any subcontract Contractor enters into pursuant to this Contract. Any compliance documentation, including but not limited to certification, received from any subcontractor shall be forwarded to DNR immediately.

## **Section 24 SELF-INSURANCE BY THE STATE OF IOWA**

Pursuant to Iowa Code chapter 669, DNR and the State of Iowa are self-insured against all risks and hazards related to this Contract. No separate fund has been established to provide self insurance, and the State of Iowa is not obligated to establish any such fund during the term of this Contract.

## **Section 25 INDEMNIFICATION**

The Contractor agrees to indemnify and hold harmless the State of Iowa and DNR, its officers, employees and agents appointed and elected and volunteers from any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments, related to or arising from: any breach of this Contract; any negligent, intentional or wrongful act or omission of the Contractor or any agent or subcontractor utilized or employed by the Contractor; the Contractor's performance or attempted performance of this Contract, including any agent or subcontractor utilized or employed by the Contractor; any failure by the Contractor to comply with

the Compliance with the Law provision of this Contract; any failure by the Contractor to make all reports, payments and withholdings required by federal and state law with respect to social security, employee income and other taxes, fees or costs required by the Contractor to conduct business in the State of Iowa; any infringement of any copyright, trademark, patent, trade dress, or other intellectual property right; or any failure by the Contractor to adhere to the confidentiality provisions of this Contract.

## **Section 26 IMMUNITY FROM LIABILITY**

Every person who is a party to the Contract is hereby notified and agrees that the State, DNR, and all of their employees, agents, successors, and assigns are immune from liability and suit for Contractor's and subcontractors' activities involving third parties arising from the Contract.

## **Section 27 NON-SUPPLANTING REQUIREMENT**

To the extent required by federal or state law, federal and state funds made available under this Contract shall be used to supplement and increase the level of state, local, and other non-federal funds that would in the absence of such federal and state funds be made available for the programs and activities for which funds are provided and will in no event take the place of state, local, and other non-federal funds.

## **Section 28 CERTIFICATION REGARDING SALES AND USE TAX**

By executing this Contract, the Contractor certifies that it is either (a) registered with the Iowa Department of Revenue, collects and remits sales and use taxes as required by Iowa Code chapter 432; or (b) not a "retailer" or a "retailer maintaining a place of business in this state" as those terms are defined in Iowa Code sections 423.1(42) and (43). The Contractor also acknowledges that the DNR may declare the Contract void if the above certification is false. The Contractor also understands that fraudulent certification may result in the Agency or its representatives filing action for damages for breach of contract.

## **Section 29 TAXES**

The State is exempt from federal excise tax, and no payment will be made for any taxes levied on Contractor's employees' wages. The State is exempt from state and local sales and use taxes on the Deliverables.

## **Section 30 EQUAL EMPLOYMENT PROVISIONS**

The Contractor has read and understands the provisions in Attachment A, Equal Employment Opportunity, attached hereto and made part of this Contract by this reference, and the Contractor agrees to conform to the requirements contained therein.

## **Section 31 FEDERALLY-FUNDED AGREEMENTS**

If this Contract is funded by federal monies, then the Contractor has read and understands the provisions of Attachment B, Additional Requirements for Federally-Funded Agreements, attached hereto and made part of this Contract by this reference, and the Contractor agrees to conform to the requirements contained therein.

## **Section 32 INSURANCE MAINTAINED BY CONTRACTOR**

The Contractor has read and understands the provisions in Attachment C, Insurance Clause, attached hereto and made part of this Contract by this reference, and the Contractor agrees to conform to the requirements contained therein.



### **Section 33 INFORMATION TECHNOLOGY SECURITY**

The Contractor and all Contractor personnel shall comply with Iowa information technology security statutes, rules and policies. By signing this contract, the Contractor acknowledges that the Contractor has read and understands the provisions of the information technology security policies adopted by the Iowa Department of Administrative Services (DAS) and DNR in effect on the date of signing. The Contractor further agrees to read and abide by any revised DAS and DNR policies, posted on the respective agency websites, that come into effect during the term of this Contract.